

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NORTHWEST SHEET METAL WORKERS
WELFARE FUND; NORTHWEST SHEET
METAL WORKERS PENSION FUND; and
NORTHWEST SHEET METAL WORKERS
SUPPLEMENTAL PENSION TRUST,

Plaintiffs,

v.

B & B HEATING & AIR CONDITIONING,

Defendant.

No.

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF**

JURISDICTION AND VENUE

1. This is an action brought pursuant to Section 301 of the National Labor Relations Act, as amended (hereafter "the Act"), 29 U.S.C. § 185, and Section 502 of the Employee Retirement Income Security Act of 1974 (hereafter "ERISA"), 29 U.S.C. § 1132. Jurisdiction and venue are conferred upon this Court by 29 U.S.C. § 185(a), 1132(a), (e) and (f).

PARTIES

2. Plaintiff NORTHWEST SHEET METAL WORKERS WELFARE FUND (hereafter "Welfare Trust") is a labor-management health and welfare trust fund created pursuant to the provisions of Section 302(c) of the Act, 29 U.S.C. § 186(c), and authorized to

sue in its own name by Section 502(d)(1) of ERISA, 29 U.S.C. § 1132(d)(1). Plaintiff Welfare Fund is administered in the State of Washington.

3. Plaintiff NORTHWEST SHEET METAL WORKERS PENSION FUND (hereafter “Pension Trust”) is a labor-management pension trust fund created pursuant to the provisions of Section 302(c) of the Act, 29 U.S.C. § 186(c), and authorized to sue in its own name by Section 502(d)(1) of ERISA, 29 U.S.C. § 1132(d)(1). Plaintiff Pension Fund is administered in the State of Washington.

4. Plaintiff NORTHWEST SHEET METAL WORKERS SUPPLEMENTAL PENSION TRUST (hereafter “Supplemental Pension Trust”) is a labor-management pension trust fund created pursuant to the provisions of Section 302(c) of the Act, 29 U.S.C. § 186(c), and authorized to sue in its own name by Section 502(d)(1) of ERISA, 29 U.S.C. § 1132(d)(1). Plaintiff Pension Fund is administered in the State of Washington.

5. Defendant B & B HEATING & AIR CONDITIONING (“B & B”) is a sheet metal contractor and is a party to a collective bargaining agreement with Sheet Metal Workers Local 103. That industry affects commerce within the meaning of the Act. B & B has employed or does employ persons represented by Local 103. B & B's principal place of business is 415 Vaughn Rd., Great Falls, MT 59404.

CLAIM FOR RELIEF

6. Plaintiffs incorporate by reference as though set forth fully herein paragraphs 1 through 5 above.

7. The collective bargaining agreement between Defendant and Local 103 was in effect at all times material hereto. By that agreement Defendant B & B became obligated to make monthly contributions to plaintiffs Welfare, Pension, and Supplemental Pension, as well as other funds, on behalf of employees represented by Local 103.

8. Defendant has also agreed to and has received money from its Local 103 employees, as part of the employees’ after-tax wages, which Defendant is and was obligated on

1 a monthly basis to deposit into each employee's account, or submit to Local 103 as part of each
2 employee's dues obligation. Defendant holds such money in trust.

3 9. Payments due to the various plaintiff and non-plaintiff Trusts, and the amounts of
4 employees' after-tax wages held in trust by Defendant, are calculated pursuant to a contribution
5 reporting form required to be prepared monthly by Defendant.

6 10. The completed contribution reporting form and accompanying payment are due at
7 the Welfare office and address within fifteen (15) days after the end of each calendar month.

8 11. In accordance with the Plaintiffs' regular procedures, Defendant was audited in
9 2015. That audit demonstrated that the Defendant had failed to make all payments due to
10 plaintiffs despite its obligation under the collective bargaining agreements to do so and despite
11 demand by plaintiffs. As such, Defendant owes outstanding contributions, in violation of its
12 obligations under the trust agreements.

13 12. Unless ordered by this Court, Defendant will continue to refuse to pay to the
14 Plaintiffs the contributions due them. As a result, Plaintiffs will be irreparably damaged.

15 13. In addition to the unpaid contributions, Plaintiffs are entitled to the following
16 pursuant to Section 502(g) of ERISA, 29 U.S.C. § 1132(g), and Section 301 of the Act, 29 U.S.C.
17 § 185, as amended:

- 18 (a) Interest on the unpaid contributions;
- 19 (b) An amount equal to the greater of:
 - 20 (i) interest on the unpaid contributions (hereinafter "penalty"), or
 - 21 (ii) liquidated damages in an amount equal to 20% of the amount
 - 22 awarded as unpaid or delinquent contributions, as provided for in
 - 23 the Trust Agreement (hereinafter "liquidated damages"); and
- 24 (c) Reasonable attorneys' fees and the costs of this action.

25 A copy of this complaint will be served upon the Secretary of Labor and the Secretary of
26 the Treasury by certified mail as required by ERISA, 29 U.S.C. § 1132(h).

WHEREFORE, plaintiffs demand judgment against the Defendant:

1. Obligating Defendant to pay to plaintiffs the full amount of contributions owing from the 2015 audit, with the proper amount of interest and with a penalty or liquidated damages as established by Section 502(g) of ERISA, 29 U.S.C. § 1132(g), the Trust Agreements, and the collective bargaining agreement;

2. Restraining and enjoining Defendant, its officers, agents, servants, attorneys, and all persons acting on its behalf or in conjunction with it from: (a) refusing to pay contributions to plaintiffs due from the 2015 audit, and refusing to timely make payments for all periods thereafter for which Defendant is obligated to file such reports under the terms of the collective bargaining agreement, and (b) refusing to pay to plaintiffs all monies, including interest, penalties, and liquidated damages, due from the 2015 audit to current, and for all periods thereafter for which Defendant is obligated to make timely payments under the terms of the collective bargaining agreement;

3. Requiring Defendant to pay to plaintiffs reasonable attorneys' fees and the costs of this action as set forth in Section 502(g) of ERISA 29 U.S.C. § 1132(g); and

4. Granting plaintiffs such further and other relief as may be just and proper.

DATED this 5th day of February, 2018.

MCKANNA BISHOP JOFFE, LLP

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